

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MARIA ROBINSON,

Plaintiff,

v.

JOHNSON & JOHNSON and ETHICON
INC.

Defendants.

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Civil Action No. 4:20-CV-03760

**DEFENDANTS' RESPONSE TO PLAINTIFF'S EMERGENCY MOTION TO EXTEND
TIME FOR TRIAL**

Plaintiff's "emergency" motion for additional trial time is a predicament of her own creation. This issue should have been raised nearly six weeks ago when the Order Setting Trial was entered, and when counsel for Ethicon first reached out to Plaintiff's counsel regarding the trial setting and length. Counsel for Plaintiff informed counsel for Ethicon that Plaintiff planned to try her case within the limits set by this Court's Order. However, after proceeding with agreed pretrial deadlines and after Ethicon filed its motion to strike her deposition designations and witness list (Doc. 195), Plaintiff now argues that "[a]t this time" she cannot fully present her case to the jury in the time ordered by this Court. Doc. 197. The only remaining cause of action in this matter is Plaintiff's failure to warn claim, which is triable within the three days allotted by this Court. Ethicon opposes Plaintiff's motion for additional trial time, and in support thereof states the following:

1. On July 5, 2022, this Court entered an Order Setting Trial, setting three days for the

trial of this matter beginning October 18, 2022. Doc. 192.

2. Three days later, counsel for Ethicon informed counsel for Plaintiff that the trial setting ordered by this Court worked for Ethicon, but would conflict with another trial setting if this trial were to run longer than the three days allotted by this Court. *See* Ex. A.

3. Counsel for Ethicon asked if Plaintiff planned to request a longer trial. *Id.*

4. On July 21, 2022, counsel for Ethicon again asked counsel for Plaintiff whether she intended to request a longer trial in this matter. *Id.*

5. Counsel for Plaintiff then responded “[a]t this time we do not plan to ask for a longer trial. We plan to go forward with the trial on October 18.” *Id.*

6. Accordingly, Ethicon continued with preparation for a three-day trial to begin October 18, 2022 – consistent with the parties’ communications and this Court’s Order. *See* Doc. 192.

7. As part of its preparation, Ethicon’s counsel reviewed Plaintiff’s amended deposition designations and witness list, conferring with Plaintiff’s counsel about the length of both documents in light of the scope of this trial and the three-day timing. Ethicon then moved to strike Plaintiff’s designations and witness list because her designations of 9.5 hours of deposition testimony and thirty-nine live witnesses was not a good-faith effort to identify the testimony she intended to present at this three-day trial. *See* Doc. 195.

8. Two days later, Plaintiff filed the motion that is the subject of this response. *See* Doc. 197.

9. In her motion for additional time, Plaintiff relies on the parties’ November 2020 Joint Discovery/Case Management Plan (“JCMP”) as well as the February 2021 Scheduling Order for support that the trial of this matter should be extended to seven days. *See* Docs. 197, 106, and

110.

10. This reliance is misplaced. At the time of the JCMP filing on November 24, 2020, Plaintiff was pursuing fourteen causes of action against Ethicon. *See* Doc. 106.

11. Similarly, these fourteen causes of action remained pending at the time the Court entered its Scheduling Order on February 22, 2021. *See* Doc. 110.

12. However, on November 1, 2021, this Court issued a Memorandum Opinion and Order narrowing Plaintiff's claims to failure to warn claims only. *See* Doc. 159.

13. Accordingly, the scope of this dispute has diminished considerably since the entry of the November 2020 and February 2021 documents to which Plaintiff refers. *See* Doc. 197. In Ethicon's view, three days is a sufficient amount of time to try this single-issue case.

14. Furthermore, as noted in the July 5, 2022 communication sent by Ethicon's counsel to Plaintiff's counsel, Ethicon's lead trial counsel has a previously scheduled trial setting that will begin immediately after the three trial days allotted for this case: on October 25, 2022, Ethicon's counsel will begin trial in the matter of *Barbara Smith, et al. v. Ethicon, Inc. et al.*, 3:20-cv-00851, United States District Court for the District of Oregon. The *Smith* case was set for trial on June 10, 2022. *See* Doc. 272, Text Order, *Smith*, 3:20-cv-00851.

15. In addition, Ethicon's witness Dr. Katrin Elbert, will be unavailable for trial from October 21-30, 2022. Ethicon informed Plaintiff of this fact when it sent Plaintiff its draft Pretrial Order on August 8, 2022.

16. Due to the long-scheduled unavailability of its trial counsel and its company witness, Ethicon would be forced to move to continue the trial date should Plaintiff's proposed order extending the current trial setting to seven days be granted. *See* Doc. 197-1.

CONCLUSION

For the reasons set forth above, Ethicon respectfully submits that Plaintiff's motion to extend time for trial be denied. Ethicon is prepared to proceed with the trial of this matter consistent with the three-day timing set forth in this Court's Order Setting Trial for October 18, 2022.

Dated: August 16, 2022.

Respectfully submitted,

/s/ Christopher Cowan

Christopher R. Cowan

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to CM/ECF participants registered to receive service in this matter.

/s/ Christopher Cowan
Christopher R. Cowan